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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 ELIOT SCOTT GRIZZLE, No. C 07-4845 SI

9 Petitioner,

10 v.

11 ROBERT HOREL,

12 Respondent.

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14 **ORDER GRANTING PETITIONER'S  
MOTION TO STAY AND ABEY;  
GRANTING PETITIONER'S MOTION  
FOR APPOINTMENT OF COUNSEL**

15 **I. Motion for stay and abeyance**

16 Petitioner has filed a motion to stay and abey this petition to allow him to exhaust certain  
17 claims in state court. Petitioner states that his original habeas corpus attorney filed a petition in state  
18 court on September 11, 2002, on or about the last day for filing such a petition. The AEDPA time  
19 clock has been tolled since that time while the state habeas corpus proceedings have been pending.  
20 See 28 U.S.C. § 244(d)(2). Petitioner states that his state court petition is currently pending before  
21 the California Supreme Court, and that he filed the instant petition "out of an abundance of caution,  
22 in case there is a delay between the time the California Supreme Court denies his petition for review  
23 and the time he learns of the denial." Motion at 3. The Court finds that petitioner has satisfied the  
24 requirements set forth in *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005), for a stay of this habeas  
action.

25 Accordingly, this action is STAYED and the clerk shall ADMINISTRATIVELY CLOSE  
26 the action. Nothing further will take place in this action until petitioner exhausts the unexhausted  
27 claims and, within thirty days of doing so, moves to reopen this action, lift the Court's stay and  
28 proceed with consideration of his habeas petition. Petitioner must promptly return to federal court

1 after his state court proceedings have concluded. If petitioner does not return within thirty days of  
2 exhausting the unexhausted claims, dismissal is possible. *See Kelly v. Small*, 315 F.3d 1063, 1071  
3 (9th Cir.), *cert. denied*, 538 U.S. 1042 (2003).

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5 **II. Motion for appointment of counsel**

6 Petitioner has filed a motion for appointment of counsel to represent him in this action. The  
7 motion was filed by Benjamin Coleman, Esq., who is representing petitioner in the state habeas  
8 corpus proceedings. Mr. Coleman states that petitioner is indigent, has been incarcerated for  
9 virtually his entire adult life, and that petitioner's family does not have the resources to retain  
10 counsel for petitioner. Motion at 2.

11 A district court may appoint counsel to represent a habeas petitioner whenever "the court  
12 determines that the interests of justice so require and such person is financially unable to obtain  
13 representation." 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the  
14 discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert.*  
15 *denied*, 481 U.S. 1023 (1987).

16 The Court finds that petitioner's claims raise complex legal issues, and, based upon Mr.  
17 Coleman's sworn representations, that petitioner is unable to financially retain counsel.  
18 Accordingly, the Court GRANTS petitioner's motion for appointment of counsel, and APPOINTS  
19 Benjamin L. Coleman and Ethan A. Balogh as petitioner's counsel. (Docket No. 2).

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21 **IT IS SO ORDERED.**

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23 Dated: October 18, 2007

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SUSAN ILLSTON  
United States District Judge